

Before the  
Federal Communications Commission  
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Reform of the Interstate Access  
Charge Rules

RM-8356

**REPLY  
OF THE  
UNITED STATES TELEPHONE ASSOCIATION**

Martin T. McCue  
Vice President & General Counsel

Linda Kent  
Associate General Counsel

900 19th Street, NW, Suite 800  
Washington, D.C. 20006-2105  
(202) 835-3100

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## TABLE OF CONTENTS

Summary . . . . .	i
I. INTRODUCTION. . . . .	1
II. THE COMMISSION SHOULD BEGIN A RULEMAKING PROCEEDING TO ADDRESS ACCESS REFORM . . . . .	3
A. A Rulemaking Proceeding Will Permit the Commission to Address the Need for Access Reform in an Expedient Manner . . . . .	4
B. A Record Has Already Been Developed on Access Reform. . . . .	8
C. The Commission Should Not Permit a Notice of Inquiry to be Used as a Delaying Tactic . . . . .	9
III. CERTAIN COMMENTS MISCHARACTERIZE THE USTA ACCESS REFORM PROPOSAL . . . . .	10
IV. EVEN IN AN ENVIRONMENT OF EMERGING COMPETITION ACCESS REFORM IS NECESSARY . . . . .	11
A. The Extent of Access Competition is not a Threshold Issue . . . . .	11
B. Even in Areas of Emerging Competition Structural Flexibility is Necessary to Permit Exchange Carriers to Respond to Evolving Technology and Customer Needs . . . . .	12
V. USTA'S PROPOSAL IS NOT DEREGULATION . . . . .	13
A. USTA's Pricing Reforms are Matched to the Level of Competition in Market Areas . . . . .	13
B. USTA's Proposal Includes Safeguards to Ensure the Reasonableness of Rates for Those Customers Without Competitive Options . . . . .	15
C. USTA's Proposal is Consistent With the Commission's Efforts to Utilize Incentive Regulation . . . . .	16
VI. SOME COMMENTERS SERIOUSLY MISCHARACTERIZE THE ACCESS MARKETPLACE . . . . .	17
A. A Nationwide Average of Access Does Not Reflect the Competitive Nature of Individual Access Markets . . . . .	18

B. Competition in the Access Marketplace Exists Today	20
D. Competition in the Access Marketplace Will Continue to Grow in the Future . . . . .	24
E. Further Information on the Extent of Competition can be Collected within a Rulemaking Proceeding . . .	26
VII. CONCLUSION . . . . .	27

## **SUMMARY**

In order to respond to the overwhelming mandate for access reform, the Commission should initiate a rulemaking proceeding. The specifics of any access reform proposal can and will be thoroughly debated and reviewed in such a proceeding.

A rulemaking proceeding will best permit the Commission to implement a new access framework which will better accommodate the public interest benefits possible in a competitive marketplace. It will permit exchange carriers to respond to customer requests and changing technology now.

A substantial record on access reform has already been developed, most recently in CC Docket Nos. 91-141 and 91-213. The Commission should not let a Notice of Inquiry to delay consideration of access reform or of USTA's access reform proposal. There is no need to delay access reform in order to address other issues, such as separations reform or universal service support first.

Certain commenting parties have mischaracterized USTA's proposal. The extent of access reform is not a threshold issue which must be decided before a rulemaking proceeding is initiated. Structural reform is needed even in areas of emerging competition. USTA's proposal is not tantamount to deregulation. USTA's proposal matches the degree of competition in a market area to pricing reform, providing a transition between less

competitive and competitive areas. Even in areas where competition is greatest, exchange carriers will still be subject to more regulation than other service providers. USTA's proposal also provides safeguards for those customers who have limited competitive options. Unlike other proposals, USTA's is consistent with incentive regulation.

Some commenting parties have seriously mischaracterized the access marketplace. A nationwide average of access does not reflect the competitive nature of individual access markets. Competition exists today and will continue to grow in the future. Further information on the extent of competition can be collected within a rulemaking proceeding from those who can best provide it: competitive access providers, interexchange carriers and others who are providing alternative access services.

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The United States Telephone Association (USTA) respectfully submits its reply to comments filed November 1, 1993 on USTA's Petition for Rulemaking (Petition) seeking reform of the interstate access charge rules.<sup>1</sup>

**I. INTRODUCTION.**

On September 17, 1993, USTA filed a Petition recommending reform of the interstate access charge rules to reflect the significant changes which have occurred in the access marketplace. The Petition responds to the overwhelming interest in access reform expressed by members of the telecommunications community and evidenced by the access-related issues raised in many Commission proceedings, as well as to the Petition for Notice of Inquiry to address access issues filed by the National Association of Regulatory Utility Commissioners (NARUC) and the Staff Analysis released by the Common Carrier Bureau on access charge reform.

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<sup>1</sup>Public Notice, FCC Report No. 1975, released October 1, 1993.

Specifically, the Petition proposes an access structure which facilitates the introduction of new services. It tailors the degree of regulation to marketplace conditions through the creation of a three-tier structure consisting of Initial Market Areas (IMAs), Transitional Market Areas (TMAs) and Competitive Market Areas (CMAs). Under this approach, rules governing pricing and filing requirements would correspond to the degree of competitive alternatives present within a particular market area. Revisions to the current price cap basket design contained in the Petition better reflect the current environment. The Petition also includes the specific rules changes necessary to implement the new access framework.

The access framework described in the Petition was designed to permit the Commission to address access reform in a comprehensive manner and to build upon other Commission initiatives, such as reducing regulatory burdens and introducing incentive regulation for small and mid-sized carriers and zone pricing.<sup>2</sup> The proposal accommodates change: changing technology, changing customer needs and changing competitive conditions. It provides a framework which the Commission can use to craft a rulemaking proceeding to address access reform.

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<sup>2</sup>Only USTA's Petition and the Commission's Staff Analysis address most of the access-related issues currently before the Commission. All other dockets or petitions are concerned only with a narrow segment of access reform. U S WEST at Attachment.

## II. THE COMMISSION SHOULD BEGIN A RULEMAKING PROCEEDING TO ADDRESS ACCESS REFORM.

Based on the record developed to date, there is a mandate within the telecommunications community that access reform is necessary. That certainly was the conclusion drawn by both the NARUC Petition and the Common Carrier Bureau's staff analysis. As noted by Commissioner Terrence L. Barnich in a recent letter to Chairman Quello, "[t]o the extent there is consensus on access reform it is that reform is needed because the current rules frustrate innovation, obstruct competitive entry and misallocate telecommunications resources...The USTA and others are correct to call for fundamental regulatory change. Maintenance of state and federal rules that are predicated upon a market environment that no longer exists will only tend to delay the emerging competitive communications market and needlessly segregate consumers from the benefits of competition."<sup>3</sup>

Even those commenters who disagreed with specific aspects of USTA's proposal expressed support for access reform. "MFS supports the concept of access charge reform".<sup>4</sup> "Based upon the comments filed regarding the NARUC request for an NOI... there is clear consensus that the time is ripe for a comprehensive reform of access charges. Only one out of eighteen parties [commenting

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<sup>3</sup>Letter of Commissioner Terrence L. Barnich, Illinois Commerce Commission, to Chairman James H. Quello, November 3, 1993. [Barnich Letter].

<sup>4</sup>MFS at 1.



on the NARUC Petition] disagreed with the need for reform".<sup>5</sup>

"As AT&T has recently stated, AT&T agrees with USTA and others on the need for broad-ranging reform of the Commission's rules to bring those rules into alignment with current marketplace and technological realities."<sup>6</sup> "CompTel shares the growing consensus...that access charge reform should be addressed in a comprehensive manner".<sup>7</sup> "Reform of the interstate access charge rules would aid, and indeed is essential to, the continued development and deployment of the [national information infrastructure]".<sup>8</sup> While the specifics of any access reform proposal can and will be thoroughly debated and reviewed in a Commission proceeding, the only major disagreement within the industry appears to be whether to proceed with a Notice of Inquiry or a Notice of Proposed Rulemaking. USTA believes that a rulemaking is necessary to respond to the mandate for access reform expressed above.

**A. A Rulemaking Proceeding Will Permit the Commission to Address the Need for Access Reform in an Expedient Manner.**

A rulemaking proceeding is the appropriate vehicle for the Commission to pursue access reform for many reasons.

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<sup>5</sup>MCI at 2.

<sup>6</sup>AT&T at 1.

<sup>7</sup>CompTel at 1.

<sup>8</sup>Information Technology Association of America (ITAA) at 10.

First, the Commission has already undertaken an aggressive approach to increase competitive alternatives. For example, the Commission has approved expanded interconnection for the provision of both switched and special access services in CC Docket No. 91-141. As noted in the Staff Analysis, "[i]n many instances, the Commission has taken direct steps to foster such competition. While competition is not an end in itself, it is often the best means of achieving other goals. As such, the Commission has repeatedly found that open entry, with its resultant competition, produces numerous public interest benefits, including improved service quality and availability, lower prices and increased innovation in telecommunications offerings. Therefore, in contemplating access reform, the Commission should seek to promote open entry and foster competition to the greatest extent possible."<sup>9</sup> However, the Staff Analysis also warned of the consequences if only exchange carriers are subject to rigid rate structure rules.<sup>10</sup> USTA agrees that a balanced approach to competition, which allows all market participants to compete effectively, best serves the public interest. Therefore, a new access framework must be implemented if the Commission hopes to realize all of the public interest benefits possible in a competitive marketplace. A rulemaking proceeding will allow the Commission to achieve the benefits of balanced competition without delay.

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<sup>9</sup>Staff Analysis at 29.

<sup>10</sup>Id. at 35.

Second, exchange carriers need access reform in order to meet customer needs. Customers will not wait while the Commission undertakes a preliminary proceeding to determine if access reform is in the public interest before it gets to the actual business of amending the current rules. Customers will simply seek alternative suppliers of new services and technological applications. The current access framework is unresponsive to the changes in technology which have occurred since 1983. It is now an obstacle to instead of a facilitator of the introduction of new services. Many new exchange carrier service offerings do not readily fit the existing rate structure, and the process for obtaining a waiver or changing the rules is costly, time consuming and highly uncertain. This inhibits exchange carrier efforts to respond to customer requests. "The combination of technological change and incipient competition for some LEC services increasingly is rendering obsolete the FCC's Part 61 and Part 69 rules for establishing the rate structure for access and for developing access charge rate levels."<sup>11</sup> Exchange carriers are the only service providers subject to rules which prevent them from offering customized and/or packaged services to customers. These rules should be amended immediately.

Third, and similarly, the evolution of technology will not stand still while the Commission conducts a Notice of Inquiry and

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<sup>11</sup>MCI at 4. See also, Staff Analysis at 20.

a Notice of Proposed Rulemaking on the issue of access reform. "Sprint concedes that the existing rules may not adequately reflect the technological advances of recent years and new technologies that may be introduced in the foreseeable future-- indeed that is one reason for initiating a comprehensive inquiry into the rules. Sprint also appreciates the frustration the LECs face in cases where petitions for waiver remain pending for long periods of time."<sup>12</sup> USTA's Petition listed many new services which are being considered for introduction in the next decade.<sup>13</sup> These services, including switched high speed service, switched multi-megabit digital service, multimedia conferencing service and customer network management, do not fit within the current structure. This becomes even more critical as technology provides even greater choices for customers.

A streamlined regulatory process, almost without exception, serves the public interest. This is particularly so with the introduction of new service offerings. There is rarely any competitive justification for regulatory delay in providing new and innovative services. As new consumer demands become known, market participants must be able to meet this demand quickly; regulators should not attempt to second guess the needs of the marketplace. Therefore, USTA's proposal may help speed the introduction of new services by eliminating the time consuming process to obtain various waivers and accordingly, the Commission should consider, within the context of a broad rulemaking, the positive impacts of a streamlined regulatory service introduction process.<sup>14</sup>

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<sup>12</sup>Sprint at 3.

<sup>13</sup>Petition at Attachment 2.

<sup>14</sup>Barnich Letter at 2.

The Commission should act now.

**B. A Record Has Already Been Developed on Access Reform.**

As noted above, issues regarding access reform have been debated in various Commission proceedings, most recently in CC Docket Nos. 91-141 and 91-213. USTA urged the Commission in both dockets to implement a comprehensive proceeding on access reform in order to provide for balanced competition. The NARUC Petition offered a specific access reform proposal for Commission consideration and the Staff Analysis draws tentative conclusions regarding the initiation of access reform. Certainly the Commission can utilize a rulemaking proceeding to seek comment on specific access reform proposals, to solicit other proposals and to obtain further information. A Notice of Inquiry is not necessary.

A Notice of Inquiry is not required procedurally. The rules do not require the Commission to issue a Notice of Inquiry prior to a Notice of Proposed Rulemaking. The Commission did not issue a Notice of Inquiry in response to the MFS Petition for Rulemaking regarding expanded interconnection<sup>15</sup>. Certainly there was no consensus on the proposals forwarded by MFS in its Petition.

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<sup>15</sup>Interconnection of Exchange Access Carrier Facilities, Petition for Rulemaking, RM-7249, filed November 14, 1989 by MFS.

**C. The Commission Should Not Permit a Notice of Inquiry to be Used as a Delaying Tactic.**

It is conceivable that some parties may be seeking a Notice of Inquiry in order to delay access reform or to delay Commission consideration of USTA's proposal. As noted above, the Commission must acknowledge the mandate for access reform expressed by parties of widely varied interests. It is also conceivable that many proposals, recommendations and concerns, including USTA's, can and will be debated within the context of a rulemaking proceeding. There is no need to air individual viewpoints in a preliminary comment cycle.

In addition, there is no need to delay access reform in order to consider separations reform or the proper level of assistance for public policy goals.<sup>16</sup> USTA agrees with Hyperion that the public policy issues related to universal service support are of critical importance. USTA's proposal includes minimal changes to existing, explicit universal service support mechanisms to ensure that all service providers contribute.<sup>17</sup> USTA also identifies two implicit support mechanisms and discusses the need for modifications. As stated in the Petition, such issues could be addressed concurrently with access reform.

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<sup>16</sup>ITAA at 11, Ad Hoc Telecommunications Users Committee (Ad Hoc) at 5 and Hyperion at 13.

<sup>17</sup>See also, Ad Hoc at 3 and AT&T at 3.

A case has not been made to consider separations reform prior to access reform. Certainly separations reform is not a prerequisite to access reform. Costs subject to the Part 69 rules have already been separated pursuant to Part 36. USTA did not propose changing any of the Part 36 rules in its Petition. If the Commission determines that separations reform is required, such issues should also be dealt with in a separate proceeding. However, there is no reason to delay access reform until such a proceeding is completed.

**III. CERTAIN COMMENTS MISCHARACTERIZE THE USTA ACCESS REFORM PROPOSAL.**

A minority of commenting parties have mischaracterized USTA's access reform proposal. For example, some claim that there is insufficient competition to warrant the new access framework proposed in the Petition.<sup>18</sup> Others claim that the proposal is tantamount to deregulation and/or provides too much pricing flexibility.<sup>19</sup> Other criticisms found in the comments state that exchange carriers do not need rate structure relief,<sup>20</sup> that the proposal will disrupt interexchange

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<sup>18</sup>AT&T at 2, CompTel at 3, MCI at 3, MFS at 5 and Sprint at 10.

<sup>19</sup>Ad Hoc at 7, CompTel at 3, MCI at 6, MFS at 8 and Sprint at 7.

<sup>20</sup>Sprint at 3. CompTel makes a rather curious argument that USTA is attempting to blur the line between switched and special access. Advancements in technology are already blurring the lines between special and switched.

competition and should meet some threshold of local competition,<sup>21</sup> that the competitive showing is inadequate,<sup>22</sup> and that it will increase opportunities for cross-subsidization of competitive services<sup>23</sup>.

All of these issues can be debated and resolved in the context of a rulemaking proceeding. However, USTA will address some of the glaring misconceptions in the remainder of these comments.

#### **IV. EVEN IN AN ENVIRONMENT OF EMERGING COMPETITION ACCESS REFORM IS NECESSARY.**

##### **A. The Extent of Access Competition is not a Threshold Issue.**

USTA certainly disputes claims that there is insufficient competition to warrant the access reform framework proposed in its Petition. The arguments on the extent of access competition have already been made in CC Docket No. 91-141 and elsewhere. USTA will discuss this issue further. However, before repeating many of the arguments contained in the record already before the Commission, USTA does not believe that debating whether or not there is sufficient access competition should cause the Commission to defer initiating a rulemaking proceeding on access reform. The extent of access competition is not a threshold

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<sup>21</sup>CompTel at 3.

<sup>22</sup>Ad Hoc at 9, AT&T at 6, Hyperion at 12, and Sprint at 7.

<sup>23</sup>MCI at 4-5.



issue which must be overcome prior to the adoption of a rulemaking proceeding.

USTA's response to the growth of competition in the access market is to permit exchange carriers greater pricing flexibility once a showing has been made regarding the presence of competition. If the showing cannot be made, exchange carriers will not qualify for greater pricing flexibility. The Commission is not required to determine first if the access market, as a whole, is competitive or not.<sup>24</sup> Nor does the Commission have to decide this issue before it adopts a Notice of Proposed Rulemaking. If other parties and/or the Commission have other proposals regarding the showing which exchange carriers should be required to make, such proposals can be debated within a rulemaking proceeding.

**B. Even in Areas of Emerging Competition Structural Flexibility is Necessary to Permit Exchange Carriers to Respond to Evolving Technology and Customer Needs.**

The majority of commenting parties support reform of the current rigid access rate structure. The Staff Analysis describes the "chilling effect" that the need to obtain waivers has on the development and introduction of new services and

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<sup>24</sup>CompTel also raises local competition as a threshold issue. (CompTel at 14). This simply is irrelevant to the issue of interstate access reform and is best left to the individual state commissions to consider.

technologies.<sup>25</sup> Any delay in introducing a new or customer-specific service, even a delay of 7.4 months, is unacceptable for customers.<sup>26</sup> Such delays only add to the cost of regulation. In the waiver proceeding, discussions center on whether the service fits an established access category. Critical issues, such as pricing, are not discussed. The current requirements are directly contrary to ongoing efforts to enhance the telecommunications infrastructure and to bring new services to customers and are incompatible with any level of competition. They only serve to prevent one group of competitors, exchange carriers, from responding to customer needs, thereby reducing customer options and conferring an unreasonable and unearned advantage on other service providers. This issue alone warrants a rulemaking proceeding.

#### **V. USTA'S PROPOSAL IS NOT DEREGULATION.**

##### **A. USTA's Pricing Reforms are Matched to the Level of Competition in Market Areas.**

As explained above, USTA's proposal requires a competitive showing before greater pricing flexibility is permitted. It allows for the Commission to establish a transition between competitive and less competitive areas.

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<sup>25</sup>Staff Analysis at 41.

<sup>26</sup>Sprint (at 3) implies that waiting an average of 7.4 months for Commission approval to introduce a new service is not sufficient to reform the current access structure.

IMAs are based on pricing zones which have already received Commission approval. The banding requirements in these areas are similar to the banding requirements which currently exist. The requirements for TMAs and CMAs are graduated, based on whether an exchange carrier meets a specific showing.<sup>27</sup>

However, even in areas where competition is greatest, the exchange carriers will still be subject to more regulation than other service providers.<sup>28</sup> For example, in CMAs, exchange carriers will still have longer notice periods and stricter tariff filing requirements and will be subject to Section 214 requirements. This certainly cannot be characterized as deregulation. USTA's proposal only attempts to reduce the regulatory advantage held by other providers.<sup>29</sup>

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<sup>27</sup>This approach is consistent with the approach taken by the Commission in CC Docket No. 90-132 except that instead of examining the competitive nature of individual services, USTA's proposal would focus primarily on the competitive nature of geographic market areas.

<sup>28</sup>Hyperion (at 12) states that competitive access providers are forced to compete by offering discounted rates without requiring term and volume commitments. This is incorrect. The Teleport Communications Group includes term, volume and promotional discounts in its tariff which can be negotiated on an individual basis. Teleport Communications Group, Tariff FCC No. 1, §§ 4.1.1 and 3.9, effective February 9, 1993.

<sup>29</sup>Even CompTel (at 4) states that competitive access providers should be subject to some of the same requirements as exchange carriers.

**B. USTA's Proposal Includes Safeguards to Ensure the Reasonableness of Rates for Those Customers Without Competitive Options.**

USTA's proposal provides several safeguards for those customers who have limited competitive options. First, prices for access services in IMAs and TMAs would continue to be managed under price cap regulation. Separate price cap indices would be established for transport prices, switching prices, public policy prices and any miscellaneous access rates. Additionally, separate market area category indices would be established for IMAs and TMAs. Separate market area category indices for TMAs would segregate the pricing decision made in these more competitive market areas from those in less competitive IMAs.

Second, prices for access services in CMAs would be removed from price cap management. This safeguard would ensure that the pricing decisions made in an exchange carrier's most competitive market areas would stand on their own.

Finally, the elimination of sharing restricts any potential which may exist to shift revenues and helps to ensure that the price caps for IMA and TMA services are not linked to the success or failure of a CMA service. Removing CMA services from the calculation of the price cap indices and the elimination of sharing would prevent revenues which are lost due to a CMA service which is not profitable from being made up by extracting profits from IMA and TMA customers.

In addition, Title II safeguards, which ensure that rates are just and reasonable and nondiscriminatory and which provide for complaints to be brought to the Commission would still apply under USTA's proposal.

**C. USTA's Proposal is Consistent With the Commission's Efforts to Utilize Incentive Regulation.**

MCI claims that its building blocks approach to costing and pricing exchange carrier access services will be more effective than USTA's proposal in preventing anticompetitive pricing and providing pricing flexibility for those building blocks which face competition.<sup>30</sup> MCI's proposal would exacerbate the inefficiencies of the current access rate structure and would result in uneconomic pricing.

MCI's proposal would result in even more regulation than is required by the current rules based on MCI's unusual assertion that regulation should be strongest during the transition to competitive markets.<sup>31</sup> The Commission rejected such arguments in both CC Docket Nos. 90-132 and 92-134, when it reduced regulation of AT&T because of the emergence of interexchange competition. The Commission should reject such arguments here as well.

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<sup>30</sup>MCI at 6.

<sup>31</sup>Id. at 4.

MCI's proposal ignores the Commission's efforts to introduce incentives into exchange carrier regulation by reinstituting traditional cost of service regulation. This would certainly be a step backward for the small and mid-sized exchange carriers which will opt for incentive regulation under the Commission's recently adopted plan in CC Docket No. 92-135.<sup>32</sup> The Commission has found that incentive-based regulation is in the public interest. USTA's proposal already provides the safeguards MCI claims building blocks would achieve and does so by expanding upon incentive regulation.

**VI. SOME COMMENTERS SERIOUSLY MISCHARACTERIZE THE ACCESS MARKETPLACE.**

As noted above, the debate regarding the extent of competition present in the access marketplace is not dispositive of whether a rulemaking proceeding should be instituted regarding access reform. The Commission has already amassed a significant record on this issue in other dockets, most recently, in CC Docket No. 91-141. If anything, the continuation of this debate underscores the need for data from competitive access providers and others on their activities. In the meantime, some commenting

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<sup>32</sup>The regulatory relief recommended in USTA's proposal would extend to all exchange carriers. See, comments of National Telephone Cooperative Association, National Exchange Carrier Association, Harrisonville Telephone Company, Taconic Telephone Corporation, Yelm Telephone Company, Moore and Liberty Telephone Company, Winnebago Cooperative Telephone Association, Bentleyville Telephone Company, Home Telephone Company, Barry County Telephone Company, and Community Service Telephone Company.

parties have seriously mischaracterized the access marketplace and use the mischaracterizations to discredit USTA's proposal.

**A. A Nationwide Average of Access Does Not Reflect the Competitive Nature of Individual Access Markets.**

Several commenters quote AT&T's assertion that competitive access providers have less than one percent of the access market nationwide.<sup>33</sup> This statistic does not provide an accurate picture of the extent of competition in the access marketplace. Access markets are not national in scope. A nationwide average does not recognize the individual characteristics of a particular market area and whether or not a customer has competitive choices available. Certainly, as even AT&T admits,<sup>34</sup> a nationwide average understates the presence of competition in urban markets. An access competitor does not have to serve a national market in order to offer a competitive alternative and take customers away from exchange carriers.

AT&T's statistic is also inaccurate because it ignores interexchange carrier provision of access services as well as other competitive alternatives including private networks, V-SATs, microwave, wireless and cable.

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<sup>33</sup>AT&T at 5, Hyperion at 4, and MFS at 5.

<sup>34</sup>AT&T at 5 states that "CAPs serve only large business customers in large urban areas...".

Finally, the Commission has already rejected the relevance of nationwide average market share in CC Docket No. 90-132 and questioned the reliability of nationwide market share as a measure of competition.<sup>35</sup> There, the Commission found an examination of individual markets to provide a more accurate picture of competition. In examining those markets, the Commission concentrated on indicators of market power rather than market share.

In that docket, the Commission also rejected arguments, such as those articulated by MFS, that exchange carrier economies of scale and scope provide those companies with a competitive advantage.<sup>36</sup> The Commission found that "[a]n incumbent firm in virtually any market will have certain advantages--including, perhaps, resource advantages, scale economies, established relationships with suppliers, ready access to capital, etc. Such advantages do not, however, mean that these markets are not competitive, nor do they mean that it is appropriate for government regulators to deny the incumbent the efficiencies its size confers in order to make it easier for others to compete. Indeed, the competitive process itself is largely about trying to develop one's own advantages, and all firms need not be equal in

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<sup>35</sup>Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5890 (1991).

<sup>36</sup>MFS at 6.



all respects for this process to work."<sup>37</sup>

**B. Competition in the Access Marketplace Exists Today.**

It is ironic that MFS describes itself as an integrated telecommunications company providing a "wide range of high quality voice, data and other enhanced service and systems specifically designed to meet the requirements of communications-intensive business and government end users," operating "fiber optic networks in major metropolitan business centers throughout the United States" and offering "telecommunications, information management and computer connectivity services in competition with the LECs and other entities" on p. 2 and then claims that competition is "fictional" on p. 4 and that the competitive threat is "imaginary" on p.5 of its comments.

In 1991, thirty separately managed competitive access providers were serving in more than 40 cities. "CAPs are now operating in so many cities and suburbs that it is difficult to keep a complete count. These include 24 of the top 25 metropolitan service areas, and the cities and regions they serve contain the headquarters of approximately 70 percent of the companies that appear on the Communications Week 100 list."<sup>38</sup> Cities such as New York and Los Angeles support as many as five

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<sup>37</sup>6 FCC Rcd 5880, 5892.

<sup>38</sup>Kellogg, Thorne and Huber, "The Geodesic Network II" (1992) at 2.25. [Huber Report].